



County of Los Angeles
CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

July 13, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF THE COORDINATION AGREEMENT WITH THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA FOR THE ESTABLISHMENT OF THE
NEW MARTIN LUTHER KING, JR. HOSPITAL
(SECOND DISTRICT AFFECTED) (3 VOTES)**

SUBJECT

Approval of the Coordination Agreement with the Regents of the University of California for the establishment of the new Martin Luther King, Jr. Hospital.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and delegate authority to the Chief Executive Officer to execute the Coordination Agreement for the establishment of an acute care hospital (Coordination Agreement) with the Regents of the University of California (UC), which relates to the opening of the new Martin Luther King, Jr. (MLK) Hospital (Exhibit 1).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Since the closure of the MLK-Harbor Hospital in August 2007, the County has been working on developing options to provide hospital services at the MLK site. In Spring 2008, the County approached the UC to assist in this effort. Since that time, both the Regents and your Board have agreed in principle to terms under which a new hospital could be opened.

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#17 JULY 13, 2010

Sachi A. Hama
SACHI A. HAMA
EXECUTIVE OFFICER

Board of Supervisors
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First District

MARK RIDLEY-THOMAS
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Approval of the recommendation will allow the Chief Executive Officer to execute the Coordination Agreement with the UC. The proposed Coordination Agreement defines the County and UC commitments regarding their respective roles in the opening of the new MLK Hospital based on the principles previously approved by your Board. Under the Coordination Agreement, the parties will create a private non-profit facility ("HospitalCo"). The Coordination Agreement includes certain ongoing funding commitments by the County and a commitment by the UC to provide leadership.

Additional agreements will be required between the County and the State, the County and HospitalCo, the UC and HospitalCo, and the State and HospitalCo. Liability and medical malpractice issues will be addressed in the agreements with HospitalCo as the non-profit will be the hospital operator. The agreements between the County and HospitalCo will also address the use of the facility, indigent care services, and overall service integration. In addition, State legislation and regulatory approvals will be necessary to implement parts of this proposal.

Implementation of Strategic Plan Goals

The recommended action supports Goal 4, Health and Mental Health of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

One-time and ongoing funding from the County, combined with Medi-Cal reimbursements, will be the principal financing mechanisms for the hospital. The UC would not provide start-up or ongoing financial support for the new hospital. The County funding commitments for the new MLK Hospital would include:

- \$50.0 million – one-time start-up fund (\$10.0 million per year over the first five years starting July 15, 2010);
- \$28.0 million – a one-time reserve fund of \$8.0 million and access to as much as \$20 million in temporary funding to be available as soon as hospital operations commence, which must be repaid with interest at the County treasury pool rate, both of which are for use by the hospital only under "exigent circumstances";
- \$50.0 million – ongoing annual intergovernmental transfer (IGT) to the State for Medi-Cal purposes to draw down federal matching revenue;
- \$13.3 million – ongoing annual support for indigent care services; and

- Acquire and retain, for at least six years, letter(s) of credit in the initial amount of \$100 million, available beginning 30 days before the opening of the hospital, to be accessed in the event that the County does not make its ongoing annual IGT. The UC and County agree to review at the fifth year if the letter(s) should be maintained for a longer period.

The \$50.0 million IGT would increase if there is growth in funding under the South Los Angeles Fund and in the money received by the County-operated hospitals.

It is anticipated that services would commence in 2013 and, except for the start-up funds, the funding noted above would be requested in subsequent fiscal years (FY) in the Department of Health Services' (DHS) budget. Of the amounts reflected above, the \$50.0 million and the \$13.3 million in ongoing funding is already included in the DHS budget for inpatient services related to patients who would otherwise have been seen at the former MLK-Harbor Hospital.

The County funding requirements in the Coordination Agreement require annual appropriation by your Board. Although the County is proposing to contractually bind itself to make the annual appropriation amounts, such commitment would be contingent upon the UC continuing to provide designated physician services and directing and managing efforts to establish the physician teaching program at the hospital.

With the exception of the start-up funds, the estimated County funding requirements referenced above would not be needed until FY 2012-13; however, there would be initial costs in the area of capital improvements for the campus. The capital project program to complete these improvements, along with the associated costs, is being presented separately to your Board.

Start-Up Fund – Under the Coordination Agreement the start-up funds are to be set aside by budgeting \$10.0 million by July 15 of each of the five consecutive years beginning July 1, 2010. Funds will be disbursed by the County to HospitalCo after execution of an agreement between County and HospitalCo. The initial \$10.0 million have been set aside in a designated fund for FY 2010-11.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Throughout our negotiations with the UC, we kept your Board apprised of our efforts and identified the proposed commitments. The Coordination Agreement memorializes the important terms approved by your Board on December 1, 2009, and includes other minor provisions necessary to effectuate those terms.

➤ County commitments – significant provisions include:

- County would provide physical plant through a lease of hospital property and buildings, and designated equipment;
- County would supply financial support to establish and support ongoing hospital operation which includes start-up funding, reserve funding, IGT funding, indigent care payment, and growth factor; and
- County would participate in the creation of HospitalCo and appointments to its Board of Directors.

➤ UC commitments – significant provisions include:

- UC would participate in the clinical planning and other activities related to establishment of a new MLK Hospital;
- UC would provide a chief medical officer and physicians to the non-profit so long as acceptable compensation can be worked out with the non-profit;
- UC would work with accrediting agencies to reestablish the hospital as a teaching program; and
- UC would work with the County and HospitalCo to establish a subcommittee of the HospitalCo board to oversee all aspects of quality assurance in accordance with HospitalCo's bylaws. Additionally, UC would assure its physicians play an active, ongoing role in continuous quality improvement activities, assurance of quality of care, and all other functions performed by a physician staff at a hospital.

➤ County and UC mutual commitments – significant provisions include:

- The County and UC would ensure that HospitalCo is formed to act as the license holder and to control the operation of the hospital;
- Both parties agree that the County and UC are not responsible for the financial viability of the hospital, are not liable for the hospital debts, and the UC is not a source of capital or operating funds; and
- The non-profit Board of Directors would be comprised of:
 - Seven-member board;
 - Two seats appointed by the County, two by the UC; and
 - Remaining three seats will be appointed by the County and UC jointly.

- HospitalCo - non-profit entity would be required to:
 - Operate the hospital - including providing for management and staff, setting policy, maintaining licensure, accreditation, certification, and other regulatory approvals; and
 - Independent of the County's reserve amounts, maintain a reserve in amount of ten percent of operating expenses on a phased-in basis.

- Term - agreement would be effective upon execution by both parties and would continue until the expiration or termination of the lease with the County or until expiration or termination of the physician services agreements if the lease has expired or been terminated and the physician agreements continue at a later date.

- Termination provisions - agreement could be terminated by either party, and under certain circumstances, only by the County or the UC. The termination provisions include:
 - Termination by either party for:
 - HospitalCo's failure to secure necessary licenses, Joint Commission accreditation, Medicare and Medi-Cal provider agreements, Office of Statewide Health Planning and Development (OSHPD) approval to open the hospital, or its exclusion/debarment or conviction of false claims in connection with federal and State health care programs, bankruptcy;
 - Failure by HospitalCo to fund and maintain funding reserve; and
 - Failure by the State to make available to HospitalCo certain specified types of reimbursement for inpatient and outpatient services to Medi-Cal beneficiaries, or Medi-Cal payment for debt services costs.
 - The UC may terminate if the County fails to make or maintain its commitments as to the physical plant or funding; and
 - The County may terminate if the UC fails to participate in clinical planning, provide designated physicians services, or direct and manage the efforts to reestablish the physician teaching program.

- Renegotiation - County and UC would agree to good-faith renegotiations of the financial terms in the event of changes to the Medi-Cal program or to federal health care laws or regulations that materially affect the revenue amount the hospital would receive for inpatient or outpatient care.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

At full operation, the hospital will have 120 licensed beds with an estimated average daily census of 108. The hospital's emergency department would provide an estimated 30,000 annual patient visits and an additional 10,000 annual outpatient service visits, including follow-up care.

The new MLK hospital will serve as a safety net provider treating a high volume of Medi-Cal and uninsured patients; it will coordinate with the County's existing network of specialty and primary care ambulatory clinics, and optimize public and private resources to fund care.

It is anticipated that inpatient services would commence in 2013.

CONCLUSION

Upon approval of the recommendation, please forward an adopted copy of the Board letter to the Chief Executive Office, Health and Mental Health Services Cluster.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:BC:SAS
MLM:gl

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
Health Services
Treasurer and Tax Collector

**COORDINATION AGREEMENT
FOR THE ESTABLISHMENT OF AN ACUTE CARE HOSPITAL**

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This Coordination Agreement ("Agreement") is made and entered into on this _____ day of _____, 2010 by and between the County of Los Angeles ("County"), a political subdivision of the State of California and the Regents of the University of California ("UC"), a constitutional corporation authorized in Article IX, Section 9 of the California Constitution for purposes of implementing the terms of their coordination agreement.

WHEREAS, UC has expertise in running top quality hospitals, and in hiring, supervising and managing physicians who render exceptional services to patients;

WHEREAS, County previously owned and operated Martin Luther King Jr.-Harbor Hospital, located at 12021 S. Wilmington Avenue in Los Angeles California, a licensed acute care hospital which provided important emergency, inpatient, and outpatient care to the residents of South Los Angeles County, and also provided a site for training physicians as well as other types of health professionals; and

WHEREAS, The County closed Martin Luther King Jr.-Harbor Hospital and its license to operate a hospital was placed into suspense in August, 2007; and

WHEREAS, there is a need for additional inpatient hospital and emergency services in South Los Angeles County which are coordinated with County and other community ambulatory care resources, and it is also desirable to have a physician and health professions training site located in that community, and

WHEREAS, County, pursuant to California Health and Safety Code Sections 1441, 1445, and 1451 and California Welfare & Institutions Code Section 16817, and UC have the authority to make provision for or to provide health care services to the needy in the State; and

WHEREAS, both parties recognize that it is in the public interest to establish a 120 bed general acute hospital with an emergency department on the campus of the closed Martin Luther King Jr.-Harbor Hospital, which is under the control of a private, non-profit entity

NOW THEREFORE, the parties agree to the following in connection with the reestablishment of an acute care hospital to provide services to the residents of South Los Angeles County.

1.0 DEFINITIONS. For purposes of this Agreement, the following terms shall have the meanings described below:

- 1.1 "Hospital" shall refer to the acute care facility licensed by HospitalCo, irrespective of such facility's actual legal name.
- 1.2 "HospitalCo" shall mean the non-profit corporation which shall license the new acute care hospital located on the campus of the former Martin Luther King Jr.- Harbor Hospital, irrespective of such corporation's actual legal name.
- 1.3 "State" shall mean the State of California, including all of its agencies and departments, including but not limited to the Department of Health Care Services. For purposes of this Agreement, the term "State" shall not include the University of California.
- 1.4 "Exigent Circumstances" shall, except during the first year in which Hospital is open, mean only a situation which meets one of the following:
 - (a) HospitalCo experiences an interruption in its cash flow due to a circumstance beyond its control which makes it unable to meet its ongoing operating expenses. Possible situations include, but are not limited to, a temporary stoppage of Medi-Cal payments for billed services;

(b) HospitalCo needs to pay an extraordinary one time cost which exceeds the balance in HospitalCo's reserve established under Paragraph 3.1.3 below. Possible situations include but are not limited to the need to repair or replace capital equipment; or

(c) HospitalCo experiences a twenty percent (20%) decline since the prior year in total net revenue, as adjusted for workload and as verified by an independent outside auditor, and is unable to meet ongoing operating expenses.

2.0 TERM. Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall be effective on the date it is fully executed and shall continue until same date as the physician care agreement provided for in Paragraph 6.2 below terminates or expires, or, if later and if applicable, the same date as the lease provided for in Paragraph 4 below terminates or expires.

3.0 MUTUAL OBLIGATIONS.

3.1 Creation of New Non-Profit Corporation. Both parties shall work together to ensure that HospitalCo is created as a California public benefit corporation which qualifies as a tax exempt organization under federal and State law.

3.1.1 HospitalCo Board of Directors. The parties shall work together to assure that HospitalCo's Board of Directors has seven members, and that each party has the permanent right and obligation to appoint two members, and the right and obligation, together with the other party jointly to appoint the remaining three members. The parties shall strive to assure that HospitalCo's bylaws permit HospitalCo to modify such Board appointment authority only with the joint approval of UC and County.

The parties further agree that, after five years, they may reconsider their authority to appoint members of HospitalCo's Board of Directors, and, if County and UC mutually agree, shall request HospitalCo to modify such appointment authority.

3.1.2 Each party agrees that it shall observe standards and procedures mutually established by the parties for making appointments to the HospitalCo board.

3.1.3 HospitalCo Reserve. The parties shall work together to assure that HospitalCo is required by its authorizing documents to fund and maintain a reserve account during any year in which revenue exceeds operating expenses, except as provided below. An annual amount of 2% (or a lesser amount if there are insufficient funds above operating expenses) of the annual operating expenses shall be deposited in the designated reserve account. This annual obligation to set aside a reserve shall exist in each year unless HospitalCo has accumulated a reserve of at least 10% of the average operating expenses incurred during the previous three years. The reserve account shall be available for use only under "exigent circumstances" as determined by an affirmative vote of five of the seven HospitalCo board members.

3.2 Non-liability. Neither party shall be responsible for the financial viability of Hospital or HospitalCo. Neither party has an obligation to make funds available to HospitalCo other than as explicitly provided in this Agreement. County

acknowledges that UC is not a source of capital or operating funds for HospitalCo. Neither party shall be financially liable for the debts of HospitalCo.

3.3 Public Representations. Neither UC nor County shall represent to third parties either of the following: (a) that Hospital is owned, licensed or operated by UC or by County, or (b) that UC or County is liable for the activities or debts of Hospital or HospitalCo. Notwithstanding this subparagraph, HospitalCo may represent that it is staffed by UC physicians.

4.0 COUNTY SPACE AND EQUIPMENT OBLIGATIONS. County agrees to lease or convey to HospitalCo equipment and a hospital structure and space in nearby buildings sufficient to meet State licensing requirements, which meet applicable structural requirements imposed by the Office Of Statewide Health Planning and Development ("OSHPD"), the Centers for Medicare and Medicaid Services ("CMS") or The Joint Commission, provided that HospitalCo executes an appropriate lease agreement or conveyance instrument with County.

4.1 County agrees to provide UC and HospitalCo with a preliminary list of equipment, by general type, to fulfill the requirement set forth in Paragraph 4 above by no later than July 1, 2010, and to provide structural plans for the designated facilities by no later than September 1, 2010. A final list of equipment shall be prepared and approved by both parties prior to the scheduled opening date of Hospital.

5.0 COUNTY FINANCIAL SUPPORT OBLIGATIONS. The parties understand and agree that County shall annually set aside funds or make payments necessary to meet the financial commitments in Paragraphs 5.1, 5.2, 5.3 and 5.4 below. County commits to

providing an annual appropriation in the amount necessary to meet its obligations under Paragraphs 5.1, 5.2, 5.3 and 5.4 of this Agreement. The parties understand and agree that such commitment by County annually to appropriate funds is specifically contingent on UC continuing to meet its obligations as set forth in Paragraphs 3 and 6 of this Agreement. The parties acknowledge that the County's commitments in Paragraph 5 of this Agreement are a material factor in UC's decision to execute this Agreement.

5.1 Start-Up Fund. County shall establish, capitalize and maintain a Start-up Fund.

Amounts in such Start-up Fund shall be used for necessary expenses related to opening Hospital, including but not limited, to purchasing consultant services, and acquiring staff, equipment and supplies. It may also be used as supplemental funding for operating expenses incurred during the period before Hospital is operating at full capacity. The Start-up Fund shall total Fifty Million dollars (\$50,000,000) and County shall capitalize the Start-Up Fund by budgeting and reserving Ten Million dollars (\$10,000,000) by July 15 of each of the five consecutive years beginning on July 1, 2010. County will disburse Start-up Funds to HospitalCo after execution of an agreement between County and HospitalCo which covers such amount, on an as-requested basis up to the then budgeted and reserved amount.

5.2 Line of Credit and Reserve Fund. County shall make available to HospitalCo by

the date the Hospital treats its first patient, a revolving Line of Credit in the amount of Twenty Million dollars (\$20,000,000) which shall be repaid by HospitalCo, with interest at the County Treasury Pool rate, in accordance with the terms of an agreement to be entered into by County and HospitalCo at the time

the Line of Credit is accessed. Further, County shall establish and capitalize a one-time Reserve Fund to be accessed by HospitalCo for the benefit of Hospital. Such Reserve Fund shall total Eight Million dollars (\$8,000,000). County shall capitalize the Reserve Fund in full by the date the Hospital treats its first patient, and hold such funds until such time as HospitalCo requests access to the Fund in accordance with the requirements described below. HospitalCo may only access the Line of Credit and Reserve Funds after its board in an affirmative vote of five of the seven HospitalCo board members finds that "exigent circumstances" exists.

5.3 Intergovernmental Transfer. County agrees to make, each County fiscal year, an intergovernmental transfer ("IGT") of Fifty Million dollars (\$50,000,000) for the benefit of Medi-Cal patients treated at Hospital. Such obligation shall commence on the date that Hospital is certified for participation in Medi-Cal. A pro-rata portion of that payment amount shall be made for the period of time beginning on the date Hospital is certified for participation in Medi-Cal and ending on the next June 30. County further agrees to execute any agreements with the State which are necessary to fulfill its obligations under this paragraph.

5.3.1 To assure that the IGT occurs, County shall, for a six year period beginning thirty (30) days before Hospital is scheduled to open, have in place one or more Letters of Credit, which initially shall be in the aggregate amount of One Hundred Million dollars (\$100,000,000). Such Letter(s) of Credit shall provide that, in the event that County has not transferred to State the full amount of any quarterly payment, as set forth below, the financial institution will, on behalf of County, transfer to State

the amount of any unpaid IGT for the particular quarter. During the fifth year after Hospital has opened, the parties shall meet and confer, in good faith, on whether the Letter(s) of Credit should be maintained for an additional period of time. Any such extension of the County's obligation to maintain Letter(s) of Credit shall be memorialized in a formal amendment to this Agreement.

- 5.3.2 The County shall transfer to State twenty five percent (25%) of the total annual IGT by September 15, December 15, March 15, and June 15 of each County fiscal year beginning after Hospital is certified for participation in Medi-Cal. For the period between the time Hospital is certified for participation in Medi-Cal and the beginning of the next County fiscal year, a prorated portion of the total annual IGT amount shall be transferred based on a schedule to be approved by both parties
- 5.3.3 County shall appoint, and notify UC of the appointment of, a third party paying agent at least ten (10) days before the date the first IGT is due. County shall provide notice to such third party paying agent after each IGT that a payment has been made, and the amount transferred. If the third party paying agent has not received notice that the full amount of the required transfer was made within 15 days of the date that the payment was due, it shall send written inquiry to County ("Inquiry Letter"). The paying agent will initiate a draw under the Letter(s) of Credit unless it receives within 15 days of issuing the Inquiry Letter, written confirmation that County has made the scheduled transfer in its entirety.

- 5.4 Indigent Care Payment. Each County fiscal year, County shall pay to HospitalCo Thirteen Million Three Hundred Thousand dollars (\$13,300,000) to support indigent care services furnished by Hospital. Such obligation shall commence on the day that Hospital treats its first patient, and shall be paid in such increments and at such times as HospitalCo and County may provide in a formal written agreement. A pro-rata portion of this annual amount shall be paid for the period between the day Hospital treats its first patient and that last day of that same County fiscal year.
- 5.5 Growth Factor. County shall provide to HospitalCo increased annual funding as determined by the application of the Growth Factor provided for in this paragraph to the IGT amount specified in Paragraph 5.3 above. The Growth Factor shall be equal to the percentage by which any funds specially allocated by the State Legislature for services in South Los Angeles for any year increase above the amount of such funds allocated for the year that the Hospital treats its first patient; however, in no event shall the Growth Factor exceed the percentage by which Medi-Cal payment to hospitals operated by County have increased above amounts received during the year that the Hospital first treats patients. County may provide to HospitalCo the increased annual funding so calculated either by increasing the IGT amount specified in Paragraph 5.3 above, or by increasing the Indigent Care Payment specified in Paragraph 5.4 above, at County's discretion. The Growth Factor shall not in any way modify the County's obligations in Paragraph 5.1 (Start-up Funds) or Paragraph 5.3 (Line of Credit and Reserve Fund).

6.0 UC OBLIGATIONS

- 6.1 Participation in Hospital Pre-Opening Activities. UC shall participate in clinical planning and other activities of HospitalCo and County in connection with opening Hospital which require physician expertise, or which are otherwise necessary to meet any of UC's other obligations under this Agreement.
- 6.2 Physician Coverage. UC agrees to negotiate, and meet its obligations under, a physician services agreement with HospitalCo. Under such agreement, UC shall provide full-time hospitalists/intensivists (approximately twenty) to provide a broad spectrum of physician services necessary to operate a 120-bed general acute care Hospital with an emergency department. This obligation shall be contingent upon UC's ability to secure (initially and on an ongoing basis), payments for its physician services that, in UC's discretion, are reasonable for the type, quality, and volume of services furnished. Without limiting the foregoing, UC shall make available to HospitalCo under the physician services agreement qualified UC employees to act as Hospital's chief medical officer, and all hospitalists, intensivists, obstetricians and anesthesiologists. HospitalCo may contract for services with non-UC physician services in consultation with UC and with the concurrence of the UC-employed chief medical officer. UC physicians shall adhere to their obligations under Hospital's medical staff bylaws and any other regulatory, accreditation, or payor imposed requirements which involve physicians' conduct. Nothing in this paragraph is intended to preclude HospitalCo from offering medical staff membership or granting privileges to community

physicians in accordance with its medical staff bylaws. UC shall not be required to provide health professions or staff other than physicians.

6.3 Teaching. UC shall have sole responsibility to direct and manage efforts to establish teaching activities at Hospital for medical students, residents and fellows consistent with physician training program accreditation standards and time frames for the re-establishment of educational programs.

6.4 Quality of Clinical Care.

6.4.1 UC will work with County and HospitalCo representatives to establish a subcommittee of the HospitalCo board to oversee all aspects of quality assurance in accordance with HospitalCo's bylaws.

6.4.2 UC will assure that physicians providing services under its physician service agreement with HospitalCo play an active, ongoing role in all medical staff functions, including but not limited to credentialing, quality assurance and quality improvement.

7.0 INDEPENDENT CONTRACTORS. This Agreement is by and between County and UC and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, or joint venture as between County and UC. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

7.1 County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation or benefits, or for providing workers compensation

coverage or benefits, for any personnel performing services under this Agreement by or on behalf of UC.

7.2 UC shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation or benefits, or for providing workers compensation coverage or benefits, for any personnel performing services under this Agreement on behalf of County.

8.0 INDEMNIFICATION.

8.1 County's Obligation. County shall indemnify, defend and hold harmless UC, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with County's negligent, reckless or willful acts and/or omissions arising from and/or relating to this Agreement. Nothing in this subparagraph shall obligate County to indemnify UC for acts or omissions by HospitalCo or any of its agents, employees, officers or directors.

8.2 UC's Obligation. UC shall indemnify, defend and hold harmless County, its special districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with UC's negligent, reckless or willful acts and/or omissions arising from and/or relating to this Agreement. Nothing in this subparagraph shall

obligate UC to indemnify County for acts or omissions by HospitalCo or any of its agents, employees, officers or directors.

9.0 ASSIGNMENT AND DELEGATION.

9.1 Assignment or Delegation by County. County shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of UC, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this subparagraph, UC consent shall require a written amendment to this Agreement, which is formally approved and executed by the parties. However, nothing in this subparagraph shall preclude County from subcontracting some or all of its duties under this Agreement so long as County retains oversight and final responsibility for such duties. Failure to comply with this consent requirement shall be grounds for UC to terminate this Agreement upon ten days prior written notice to County.

9.2 Assignment or Delegation by UC. UC shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County and any attempted assignment or delegation without such consent shall be null and void. For purposes of this subparagraph, County consent shall require a written amendment to this Agreement, which is formally approved and executed by the parties. However, nothing in this subparagraph shall preclude UC from subcontracting some or all of its duties under this Agreement so long as UC retains oversight and final responsibility for such duties. Failure to comply with this consent requirement shall be grounds for County to terminate this Agreement upon ten days prior written notice to UC.

10.0 RENEGOTIATION. Without limiting any other provision in this Agreement, the parties agree to negotiate, in good faith, revisions to the County's financial support obligations as set forth in Paragraph 5 above, including but not limited to, the amount of the IGT provided for in Paragraph 5.3 or the indigent care payment provided for in Paragraph 5.4, in the event that changes are made to the Medi-Cal program or to federal health care laws or regulations which materially affect the amount of revenue that Hospital would receive for its care to inpatients or outpatients, or the amount of supplemental revenue County receives for the South Los Angeles area. Any changes to County's financial support obligations resulting from these negotiations shall be formalized in an amendment to this Agreement in accordance with Paragraph 17 below.

11.0 DISPUTES. Both parties agree that, notwithstanding any other provision of this Agreement, prior to exercising any right to terminate, except for those specified in Paragraph 13 below, or initiating any lawsuit in connection with this Agreement, they shall attempt to resolve any dispute between them. Such dispute resolution efforts shall, at a minimum, include a written specification of the points in dispute by the dissatisfied party which is provided to the other party, the provision of a reasonable opportunity to respond, and a face-to-face meeting between the County Chief Executive Officer and the UC Senior Vice President, Health Sciences and Services.

12.0 COMPLIANCE WITH LAW. In fulfilling their obligations under this Agreement, both parties shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and directives, including but not limited to all provisions which relate to the employment of aliens and others and those that preclude discrimination in employment or services. All provisions required by such federal, state or local laws, rules, regulations,

ordinances and directives. to be included in this Agreement are, by this paragraph, incorporated into this Agreement by reference.

13.0 TERMINATION BY EITHER PARTY. Either party may terminate this Agreement by giving ten (10) days written notice to the other party on the occurrence of any of the following events.

13.1 Licensure. This Agreement may be terminated if HospitalCo fails to secure licenses, permits or registrations necessary to operate a general acute care hospital by a deadline to be jointly determined by the parties, or loses any such licenses, permits or registrations thereafter, provided that, such termination may only occur after a reasonable period has been given to allow the situation to be rectified and the responsible entity is unable to rectify the situation. The parties acknowledge that the effort to secure such licenses, permits or registrations may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of permitting termination so long as the license, permits or registrations are received the deadline.

13.2 Accreditation. This Agreement may be terminated if Hospital fails to secure initial accreditation from The Joint Commission or other appropriate accrediting body(ies) by a deadline to be jointly determined by the parties, or subsequently has accreditation removed, provided that, such termination may only occur after a reasonable period has been given to allow the situation to be rectified and the responsible entity is unable to rectify the situation. The parties acknowledge that the effort to secure initial accreditation may be comprised of one or more

attempts, and that any unsuccessful attempt, by itself, shall not be considered an event permitting termination, so long as accreditation is achieved by the deadline.

13.3 Provider Agreements. This Agreement may be terminated if HospitalCo fails to secure Medicare and Medi-Cal provider agreements by a deadline jointly determined by the parties or if subsequent termination, revocation or expiration of such agreements occur, provided that, such termination may only occur after a reasonable period has been given to allow the situation to be rectified and the responsible entity is unable to rectify the situation. The parties acknowledge that the effort to secure Medicare and Medi-Cal agreements may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of permitting termination, so long as provider agreements are in place by the deadline.

13.4 OSHPD. This Agreement may be terminated if OSHPD approval as needed to open the Hospital is not received. The parties acknowledge that the effort to secure OSHPD approval may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of permitting termination, so long as OSHPD approval is timely achieved.

13.5 Exclusion/Debarment/False Claims. This Agreement may be terminated if HospitalCo or any entity contracted with HospitalCo to manage Hospital experience any of the following:

13.5.1 Exclusion or suspension from participation in any federal health care program;

13.5.2 Debarment by federal or state government contracting agencies;

13.5.3 Conviction for an activity that (1) violates 42 U.S.C. §1320a-7b or (2) qualifies as a federal health care program offense under 18 U.S.C. §14(a).

13.6 Bankruptcy. This Agreement may be terminated if HospitalCo or any entity contracted with HospitalCo to manage Hospital files a petition for bankruptcy (liquidation) under the U.S. Bankruptcy Code.

13.7 HospitalCo-Funded Reserve. This Agreement may be terminated if HospitalCo fails to fund and maintain the reserve provided for in Paragraph 3.1.3, or the same reserve as required by any agreement between HospitalCo and County or between HospitalCo and UC.

13.8 Medi-Cal Funding Requirements. This Agreement may be terminated if HospitalCo/Hospital is unable to obtain (i) reimbursement based on State general fund and related federal financial participation for inpatient services to Medi-Cal beneficiaries at a rate which is at least 60% of Hospital's costs, (ii) Medi-Cal payment for debt services costs on a County project on the Hospital site pursuant to Welfare & Institutions Code Section 14085.5 (SB. 1732) or (iii) reimbursement for outpatient services to Medi-Cal beneficiaries under the same methodology as is established in Welfare & Institutions Code Section 14105.24 (CBRC) or, (iv) if any of those reimbursement systems are changed or repealed, and HospitalCo/Hospital is unable to obtain the equivalent amount of Medi-Cal funds as would have been available had those reimbursement systems not been modified or repealed. Further, County may terminate in the event that the State materially reduces or eliminates the special funding to County for the South Los Angeles area.

14.0 TERMINATION BY UC. In addition to any rights conferred in Paragraph 13 above, UC may terminate this Agreement upon occurrence of either of the events of default set forth below, after giving County five business days advance written notice, provided that County has previously been given notice of its default and a reasonable period in order to cure the default, and County is unable substantially to cure the default. Termination of this Agreement pursuant to this paragraph shall not preclude UC from asserting that a breach occurred or pursuing any other remedy available to it under law or equity.

14.1 County fails to make available the designated facilities and equipment required under Paragraph 4 of this Agreement. Irrespective of the other remedies which might be pursued by UC, County's failure to meet its obligations in Paragraph 4.1 above shall not provide a basis for termination of this Agreement; or,

14.2 County fails to maintain its financial commitment as required under Paragraph 5 of this Agreement.

14.3 HospitalCo materially breaches the initial or successor agreement between UC and HospitalCo for physician services.

15.0 TERMINATION BY COUNTY. In addition to any rights conferred in Paragraph 13 above, County may terminate this Agreement upon occurrence of either any of the events of default set forth below, after giving UC five business days advance written notice, provided that UC has previously been given notice of its default and a reasonable period in order to cure the default, and UC is unable substantially to cure the default. Termination of this Agreement pursuant to this paragraph shall not preclude County from asserting that a breach occurred or pursuing any other remedy available to it under law or equity.

- 15.1 UC fails to provide assistance in Hospital pre-opening activities to the extent required under Paragraph 6.1 of this Agreement, or
- 15.2 UC fails actually to furnish the physicians services referenced in Paragraph 6.2 of this Agreement, or
- 15.3 UC fails to fulfill its obligations to create training sites under Paragraph 6.3 of this Agreement.
- 15.4 HospitalCo materially breaches the initial or successor lease referenced in Paragraph 4.0 above between the County and HospitalCo.
- 16.0 MUTUAL TERMINATION. Both parties may terminate this Agreement at any time by joint consent.
- 17.0 AMENDMENT AND INTEGRATION. This Agreement fully expresses all understandings of the parties concerning all matters covered and shall constitute the total agreement. No addition to, or alteration of, the terms of this Agreement whether by written or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by the parties.
- 18.0 CONSTRUCTION, INTERPRETATION AND JURISDICTION.
- 18.1 Mutual Drafting. None of the parties nor any of the parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision of it in any judicial or other proceeding that may arise between the parties.
- 18.2 Headings. The various headings used in this Agreement are solely for the convenience of the parties and shall not be used to interpret this Agreement.

- 18.3 Governing law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- 18.4 Jurisdiction. The parties each agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement.
- 18.5 No Waiver of Terms or Conditions. Failure to insist on compliance with any term or condition contained in this Agreement shall not be deemed a waiver of that term or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19.0 SEVERABILITY. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain in full force and effect.

20.0 NOTICE. All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, or sent by an overnight delivery service which produces a signed receipt and shall be addressed as shown.

UC: John D. Stobo M.D.
Senior Vice President Health Sciences and Services
University of California Office of the President
1111 Franklin Street
Oakland, California 94607

With a copy to: Deputy General Counsel-Health Law
University of California Office of General Counsel
1111 Franklin Street
Oakland, California 94607

County: William T Fujioka
Chief Executive Officer
County of Los Angeles
500 W. Temple Street, Room 713
Los Angeles, California 90012

Addresses or addressees may be changed by either party giving ten (10) days' prior written notice of such change to the other party.

21.0 PROVISIONS RELATED TO EXECUTION OF THE AGREEMENT.

21.1 Authorization Warranty. Each party represents and warrants that the person executing this Agreement is an authorized agent who has actual authority to bind the party to each and every term, condition, and obligation of this Agreement and that all requirements to provide such actual authority to the signing individual have been fulfilled.

21.2 Counterparts. This Agreement may be executed by facsimile or other imaged signature and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles and the Regents of the University of California have caused this Agreement to be subscribed by their duly authorized representatives on the dates shown below.

County of Los Angeles

Regents of the University of California

By _____
William T Fujioka
Chief Executive Officer

By _____
Mark G. Yudof
President

Date _____

Date _____